PREVENT LEGALIZATION OF DISCRIMINATION - VOTE NO ON AMENDMENT 2

By: Craig M. Cornish*

The current extent of discrimination in Colorado against persons on the basis of their sexual orientation or conduct in employment, housing and public accommodations is presently unknown. If there is none, and won't be any in the future, passage of Amendment 2 will have no effect, and thus is unnecessary. However, given anecdotal information that such discrimination does exist, the formation of a statewide organization for the sole purpose of amending the State Constitution to insure that gay, lesbian, and bisexual discrimination will not run afoul of the law is a strong indicator of a desire on a substantial portion of the public to engage in such discrimination.

If passed, Amendment 2 would legally empower private businesses and government agencies to discriminate against individuals based on their "homosexual, lesbian or bisexual orientation, conduct, practices or relationships." (emphasis added) The proposed Amendment permits discrimination against both homosexuals and bisexuals. It permits discrimination against both persons who engage in homosexual or bisexual conduct, and those who merely possess a homosexual, lesbian or bisexual "orientation". Unfortunately, the proposed Amendment does not define homosexuality, bisexuality or "orientation." A definition of these terms is critical because the breadth of the law may legalize discrimination against many people who consider themselves heterosexual.

What counts as "conduct, practices or relationships'? A person's sexual conduct varies over time. For example, according to the 1990 Kinsey Institute New Report on Sex, 20-30% of all men in the United States have reached sexual climax with another male at some time in their post-pubescent life. 50% of college educated and 20% of non-college educated women have had same-gender erotic contact past puberty. 10-20% of the adult population in the U.S. has had sex with partners of both genders over a period of some years. 60-80% of all men who call themselves gay (homosexual) have had sex with a person of the opposite gender. The same is true for 75-80% of lesbians (female homosexuals).

If the words in Amendment 2 are to be given their plain meaning, the scope of persons denied equal rights is not based only on behavior. Amendment 2 also encompasses persons with a homosexual, lesbian and bisexual orientation. This, presumably, was intended to embrace a group of people who possess a particular orientation but who have not acted upon it. But how is one's orientation to be determined - by one's sexual fantasies, the objects of their erotic interests or love, self-definition, their behavior, or as a combination of these factors? According to the latest Kinsey report, "researches have discovered that one of the most common fantasies among heterosexuals is having sex with

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a same-sex partner..." Thus, depending on how these terms are defined a large segment of society could be subject to state-sponsored discrimination.

If these terms are undefinable to scientists, how are courts expected to define them? What's even more frightening to think about is if Amendment 2 passes will businesses, landlords and employers be allowed to gather information needed to identify the unfortunate souls who are targeted by Amendment 2? If so, how will such identifications be made? By visual snooping, informants, application forms, psychological tests to be developed or plethysmographic assessment (measurement of penil vascular enlargement in response to sexually-provocative photographs or slides)?

Many cultures single out discrete and insular groups of people for vilification and hatred. These scapegoats serve as facile explanations for society's ills. Americans have wanted to ship African-Americans out of their country. Many Germans blamed Jews and homosexuals for their social problems. In Turkey and Irag it's the Kurds. In Iran it's the Bahai's. Government endorsed discrimination fuels mob hatred which often leads to physical violence.

As much as the notion of singling out anyone for state-approved discrimination is offensive to all moral traditions of American culture, the proponents of Amendment 2 should reconsider their efforts to clarify who they believe should be the target of state-sponsored discrimination.